FILE COPY

Office-Supreme Court, U.S.
FILED
SEP 19 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 333

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,

Respondents.

BRIEF OF RESPONDENT NEWS SYNDICATE CO. INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STUART N. UPHAM,
Attorney for Respondent,
News Syndicate Co. Inc.

ANDREW L. HUGHES,
of Counsel.

ILE COPY

Office-Supreme Court, U.S.
FILED
SEP 16 1955
JOHN T. [illegible], Clerk

No. 328

IN THE

Supreme Court of the United States

October Term, 1955

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

NEWS SYNDICATE COMPANY, INC., and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MEMORANDUM FOR RESPONDENT NEW YORK MAILERS' UNION NO. 6

SIDNEY SUGARMAN
280 Madison Avenue
New York 16, New York

GEORGE P. YOU ARMS

GEORGE KAUFMANN
1701 K Street, N. W.
Washington 6, D. C.

DAVID L. SEIPEL
1411 K Street, N. W.
Washington 6, D. C.

Attorneys for New York Mailers' Union No. 6, International Typographical Union, AFL-CIO

Parker Printing Co., Washington, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 339

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

NEWS SYNDICATE COMPANY, INC., and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MEMORANDUM FOR RESPONDENT NEW YORK MAILERS' UNION NO. 6

Respondent New York Mailers' Union No. 6 submits this memorandum to express its acquiescence in the petition of the Government for a writ of certiorari to review the decision of the Court of Appeals for the Second Circuit in *National Labor Relations Board v. News Syndicate et al.*, 279 F. 2d 323, entered May 20, 1960. We agree that the decision below and the decision of the Court of Appeals for the District of Columbia in *Honolulu Star-Bulletin et al. v. N.L.R.B.*, 274 F. 2d 567 (C.A.D.C., 1959) are in conflict with the decision of the Court of Appeals for the First Circuit

in *International Typographical Union, et al.*, v. *N.L.R.B.*, (278 F. 2d 6, C.A. 1, 1960), No. 340, October Term, 1960, and we agree with the Government's position as to the importance of the questions presented.[1] Our reasons are more fully set forth in the petition for certiorari in *International Typographical Union* v. *N.L.R.B., supra.*

However, we submit that Judge Hincks' opinion for the Court below is so compellingly and carefully reasoned (See Petition, pp. 22-43) as to warrant consideration by this Court of summary affirmance of the decision below, as in *United States* v. *Lane Motor Co.*, 344 U.S. 630, 631 (1953) and in *Sword Line, Inc.* v. *United States*, 351 U.S. 976 (1956). Our reasons, briefly stated, are:

1. The Government concedes (Pet. p. 8) that the findings of the Board were "in large part, set aside by the Court of Appeals". No issue is made of this in the petition. We therefore feel it unnecessary to burden this Court with a detailed examination of the evidence, but respectfully refer the Court to the

---

[1] We stress our strong agreement with the Government's view that the revision of the I.T.U. General Laws, referred to in its Petition at p. 17, fn. 14, does not render the issue moot. Those changes were principally made under the duress of a lower court *interim* injunction. *Alpert* v. *I.T.U.*, 161 F. Supp. 427, 430-431 (D.C. Mass., 1958). In subsequent proceedings in that case, after revisions in the General Laws had been made, the Court noted that "The number of items which petitioner (the General Counsel of the NLRB) still contests are extensive; indeed, *petitioner now objects to more than he did originally*" (*id.* at page 432, emphasis supplied). It is clear from this and other cases that the Board asserts a power to decide for the members of the ITU what the General Laws may, or should, contain. This threat to the internal democratic freedom of ITU members has not been dissipated by the revision of the laws.

opinion below for what we believe to be an entirely full, fair and accurate statement of the case. See *N.L.R.B.* v. *Pittsburgh S. S. Co.*, 340 U.S. 498, 502-03 (1951); *N.L.R.B.* v. *American National Ins. Co.*, 343 U.S. 395, 409-10 (1952).

2. The questions presented by the Government are solely issues of law, relating to the proper construction of the agreement to which the respondents were parties, and its legality under the Act. Hence no problem arises under *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 488 (1951). See *Great Northern Ry.* v. *Merchants' Elevator Co.*, 259 U.S. 285, 291 (1921). "Where Congress has in the statute given the Board a question to answer, the Courts will give respect to that answer; but they must be sure the question has been asked". *N. L. R. B.* v. *Insurance Agents*, 361 U.S. 477, 499 (1960). Here the question has not been asked (*id.* at 490, 498).

3. As we read the Government's petition, it appears to be conceded (Pet. p. 2., fn. 2) that if this Court sustains the Court below on the principal issue tendered by the Government, affirmance of the opinion below on the footnoted issues is also required. The sole question before this Court is, therefore, whether a contract clause providing that,

> "It is understood and agreed that the General Laws of the International Typographical Union, in effect January 1, 1955, not in conflict with this contract or federal or state law, shall govern relations between the parties on conditions not specifically enumerated herein",

(See Pet. p. 25, fn. 6) renders an agreement illegal where, as is not disputed, certain of the General Laws

contemplate closed shop conditions (See Pet. p. 26, fn. 7).

The Board has persistently read the words "not in conflict with . . . federal . . . law" as words of incorporation by reference, rather than as words of exclusion, a matter more fully discussed in the petition for certiorari in No. 340, this Term at pp. 8-13. The Board's misconstruction was exposed by the Court below (Pet. pp. 28-29, particularly fn. 10), and by the District of Columbia Circuit (Pet. in No. 340, pp. 19a, fn. 2; 21a). For the reasons there set forth, we believe that the error in the Board's reasoning is so patent as to warrant summary affirmance.

Indeed, the Board itself appears to recognize this error, for it now states that the agreement is to be judged, not by its terms, but is to be "evaluated in the light of foreseeable employee reaction" (Pet. p. 11). Chief Judge Prettyman, in *Honolulu Star-Bulletin* (See Pet. in No. 340, pp. 20a-22a), whose opinion in this respect was fully adopted by the Court below (pet. pp. 24-28), effectively laid this ghost to rest. To find "restraint or coercion" the Board must assume that the hypothetical employee or applicant for employment it wishes to protect will first read the agreement with the close attention of a lawyer in the Board's regional office and conclude, like him, that it is valid on its face (R. 521-522). But even this will not provide the putative "coercee" the blissful freedom from subjective apprehension which the Board has created as a statutory objective. Since the Board assigns him a rare obtuseness or cynical skepticism, he will disregard the plain meaning of the agreement's "not in conflict with law" proviso and sedulously seek out and read a copy of the ITU's General Laws

except, of course, Article XIV which provides that the operation of any General Law is suspended "in circumstances in which the enforcement or observance would be contrary to public law". (See Petition in No. 340, p. 20a) Such a reading will (under the Board's theory) inevitably persuade him to the conclusion that given a future possible opportunity (and contrary to both the contract and the normal desire of normal citizens to act lawfully), the parties would illegally apply one or another of the ITU's General Laws and thereby prejudice his rights. At this point he is ripe to be "restrained or coerced." And at this point, we say that this is administrative adjudication run amuck. The Board's decision in this case assumes a knowledgeability, sensitivity, acquaintance with labor law, and doggedness in seeking to be "restrained or coerced" which are never to be found among applicants for employment or employees, in this or any other industry.[2] There must be a limit to the amount of strain the Board can place on suspicion and speculation based upon ludicrous flights from industrial reality. *Cf. NLRB* v. *P. R. Mallory & Co.*, 237 F. 2d 437, 444 (CA 7, 1956); *Miller Mfg. Co.* v. *NLRB*, 265

[2] That there may be present some degree of uncertainty in the contract we readily concede. The reasons why collective agreements of necessity contain large areas of uncertainty are developed in *United Steelworkers* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, 578-582 (1960). But uncertainty is not "restraint or coercion," and the Board's speculation that there may be a class of employees too obtuse to understand the plain meaning of plain language cannot establish that the respondents sought to, or did violate the Act. It is noteworthy that in all of the litigation on this issue the Board has never alleged, or proved, that *any* ITU General Law has been illegally applied since passage of the Act in 1947.

F. 2d 225, 226 (CA 7, 1959); *NLRB* v. *Thomas Rigging Co.*, 211 F. 2d 153, 158 (CA 9, 1954).

The fact that the Board relies on surmise, and not on proof, is most glaringly illustrated by the order which it proposed for entry. Despite the urging of the General Counsel (R. 701) and the union that the Board specify which of the General Laws are illegal, the Board relegated this problem entirely to the respondents (R. 717) and failed to make any specification whatever. In No. 340, *I.T.U., et al.* v. *N.L.R.B.*, the proposed order as enforced by the Court of Appeals for the First Circuit would invalidate the "laws" clause in its entirety, even though no question has been raised as to the validity of the great bulk of the General Laws. Had the Board not engaged in mere speculation as to what might happen; had it instead awaited proof that one or another General Law had been unlawfully applied, this matter could have been explored in the light of reality rather than conjecture.

We think it clear that "the whole contract shows respect for the law and not defiance of it . . . There is no reason apparent why terms should be implied from some outside authority to take the place of legal terms collectively bargained". *N.L.R.B.* v. *Rockaway News Co.*, 345 U.S. 71, 78-79 (1953). This Court has already pointed out that "the Board may not, either directly or indirectly, . . . sit in judgment upon the substantive terms of collective bargaining agreements", *N.L.R.B.* v. *American National Insurance Co.*, 343 U.S. 395, 404 (1952).

CONCLUSION

For the reasons set forth respondent urges that the petition for a Writ of Certiorari be granted and that summary affirmance of the decision below be entered.

Respectfully submitted,

SIDNEY SUGERMAN
295 Madison Avenue
New York 17, New York

GERHARD P. VAN ARKEL

GEORGE KAUFMANN
1701 K Street, N. W.
Washington 6, D. C.

DAVID I. SHAPIRO
1411 K Street, N. W.
Washington 6, D. C.

Attorneys for New York Mailers' Union No. 6, International Typographical Union, AFL-CIO